



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C. 20460

FEB 03 2017

OFFICE OF  
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Outside Activity

FROM: Justina Fugh *Justina Fugh*  
Alternate Designated Agency Ethics Official

TO: Patrick Davis  
Special Assistant  
Office of the Administrator

I have received your request of January 31, 2017, to engage in outside activity for compensation as the sales director of Telephone Town Hall Meeting (TTHM). You wish to continue to set up meetings for demonstration purposes and solicit prospective clients for TTHM on your own time and not using any EPA resources. In exchange for your services, you anticipate reimbursement of \$(b) (6) per month for expenses.

You are currently a Schedule C appointee at EPA, which means that you are a "covered noncareer employee" subject to the outside earned income limitations set forth at 5 CFR § 2635.804. Under this provision, you cannot receive compensation for, among other things, practicing a profession that involves a fiduciary relationship or affiliating with or being employed by a firm that provides professional services involving a fiduciary relationship. Your service as sales director does not involve any fiduciary duty. Please note, however, that you are still subject to the outside earned income limit, which is currently \$27,765 per annum. Based on the information you provided and the fact that you are currently serving in a 120-day limited term appointment, I do not expect your income from this outside compensated entity to exceed the cap.

I am therefore approving your request for outside activity and set forth below a reminder about several ethics principles:

Financial Conflicts of Interest

- Because you will be compensated by TTHM, you have a financial conflict of interest pursuant to 18 USC § 208. You cannot participate in your EPA duties in

any matter that will have a direct and predictable financial effect upon your outside employer. You cannot work on particular matters that involve TTHM as a specific party nor can you work on particular matters of general applicability (e.g., how the Administrator can reach a broader audience by using telephone technology services).

- You will need to report the income from this outside activity on Schedule A of your financial disclosure statement, and the outside position on Schedule D.

#### Representation back to the United States

- Don't forget, you are generally prohibited by a criminal law from representing another entity back to the federal government in any matter in which the United States is a party or has a direct and substantial interest. See 18 USC § 203. You cannot represent TTHM as agent or attorney in connection with any matter in which the United States is a party or has a direct and substantial interest.

#### Misuse of Position Misuse of Position

- Because you will be compensated, you cannot ever use any EPA equipment, including phones, workspace, computer and time. The Agency's Limited Personal Use of Equipment policy, found at <http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/2101-0.pdf>, states that there is no *de minimis* use of EPA equipment to further any compensated outside activity.
- You cannot use your EPA position, title or affiliation in connection with your outside activity. See 5 CFR § 2635.807(b). You also cannot use your federal position to further any outside fundraising efforts. In addition, there are some restrictions when engaged in fundraising (even on personal time). See 5 CFR § 2635.808. For example, you cannot personally solicit funds from a subordinate nor from any person who is an Agency prohibited source. We define "prohibited source" as any entity or person who is doing business with the Agency, seeks to do business with the Agency or is regulated by the Agency.

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As always, if you have any questions, please feel free to contact me at 564-1786.